

Troubled Times for The U.S. Supreme Court

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Abstract:

This article analyzes the decrease in public trust of the Supreme Court across recent years. It defines the standards for legitimacy within the law and the courts while examining factors that play a role in shaping public trust and opinion. The rise of conservatism, the “over-politicization” of the courts, and the increase in the use of emergency decisions and “shadow-dockets” will be discussed to analyze how the Supreme Court’s legitimacy has been damaged.

Article

I. Introduction

In 1927, Carrie Buck, a woman diagnosed as “feeble-minded”, was forced to undergo sterilization based on a Virginian law. Buck challenged the procedure—which would be performed against her will—on the grounds that it violated her constitutional freedoms.¹ Horrifically, Buck lost her case and her sterilization was green flagged. As Chief Justice Oliver Wendell Holmes contested, “Three generations of imbeciles are enough.” The Supreme Court had not only stripped Buck of her fundamental rights but utilized the legal system as a dangerous tool for justifying inhumane practices.²

Buck v. Bell caused national outrage across disability rights organizations and civil rights groups for the Court’s acceptance of eugenics that starkly resembled the Nazi regime in Germany. This decision is not the only instance of a controversial Supreme Court ruling: according to Pew Research Center, polls show that a case as recent as the overturning of *Roe v. Wade* was disapproved by 57% of Americans.³ Other cases, such as *Dred Scott v. Sandford* and *Plessy v. Ferguson* upheld discriminatory systems under the Court’s discretion.⁴

Cases of controversy, like those above, are commonly studied by sociolegal and political scholars to examine trends in the popularity of the Supreme Court and how it changes over time. The ability for the Supreme Court to maintain respect and trust among the public is often referred to as its “legitimacy.” Have those previous mistakes of the Court been enough to prevent them from publishing another opinion that receives monumental backlash? Unfortunately, recent data

¹ *Buck v. Bell*, 274 U. S. 200, 201-204 (1927).

² Victoria Nourse. *Buck v. Bell: A Constitutional T. Bell: A Constitutional Tragedy from a Lost World*, 39 PEPP L.J. 101, 101-9 (2011).

³ *Majority of Public Disapproves of Supreme Court’s Decision To Overturn Roe v. Wade*. PEW RESEARCH CENTER (Jul. 6, 2022), <https://www.pewresearch.org/politics/2022/07/06/majority-of-public-disapproves-of-supreme-courts-decision-to-overturn-roe-v-wade/>.

⁴ *Dred Scott v. Sandford*, 60 U.S. 393 (1856)
Plessy v. Ferguson 163 U.S. 537 (1896)

suggests that the Supreme Court may be facing a legitimacy crisis worse than ever before. As the court's popularity reaches historical lows, the stability of the nation's democracy is at stake.

II. Defining Legitimacy in the Law

In order to examine the public's perception of the Supreme Court, we must first understand the public's perception of the law. Studies measuring public attitudes and perceptions surrounding the legal system show that generally, Americans display "unquestioning public respect" for rules, legislation, and the judiciary.⁵ People's interactions and associations with the law create a mystification, allowing the law to garner authority and respect without people fully understanding it. Legitimacy is therefore created because of an "illusory picture which law constructs of itself."⁶ Even when citizens may disagree with certain procedures, they put their trust in the law under the belief that it maintains social order and ultimately serves the interests of the general population.

So, what gives the law its mystical power? What determines if the courts are legitimate, and who decides when they are not? Tom R. Tyler, a law professor, identifies legitimacy as a combination of two models: one focused on genuine credibility and one focused on popular or social legitimacy.⁷

The first model emphasizes the professionalism of legal authorities that creates genuine credibility. It relies in the idea that the law should be consistent and formally established. Laws should be clearly written out and consistently applied, allowing the public to clearly "observe the body of rules" enforced. According to this framework, the law, the police, and the courts should maintain some distance from the public and be "largely autonomous" to remain formally grounded.⁸ A formal and organized structure is noted as a defining feature of a legitimate legal system, as opposed to one that is disorganized and cannot properly enforce rules upon citizens.

The second model identifies the concept of popular legitimacy: how public opinion shapes the law's authority. Popular legitimacy focuses on whether the law is perceived as fair. Even if the law is logical and transparent, its legitimacy can be damaged when people dislike or distrust the legal institutions that they have access to. Popular legitimacy is measured by analyzing opinions on the law based on interactions with legal actors, such as, the police, the courts, lawyers, and other legal bodies. Positive experiences shape the view that the law is consistent, neutral, and transparent, thus improving its popular legitimacy.⁹ On the other hand, negative experiences with the law can create negative perceptions: individuals will view rules or

⁵ William L. Felstiner & Austin Sarat, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office*, 98 YALE L.J. 1663 (1958).

⁶ *Id.* at 1666.

⁷ Tom R. Tyler, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 PSYCHOL. PUB, POLY & L. 78, 78-82 (2014).

⁸ *Id.* at 66

⁹ Tom R. Tyler & Justin Sevier, *How do the Courts Create Popular Legitimacy?: The Role of Establishing the Truth, Punishing Justly, and/or Acting Through Just Procedures?*, 77 ALB. L.J. 1095, 1105-107 (2016).

legal authorities as unfair, exploitative, or inadequate. This concept, known as procedural justice, has been noted as an important tool in shaping credibility to the legal system.¹⁰

Overall, legal scholars typically define legitimacy by measuring the public's compliance with rules and officials. Both a solid foundation of credibility, and a positive perception of the law, give people reason to comply with the legal system. It should be noted that this article does not refer to compliance that is forced through either "fear of adverse consequences", restrictions on free speech, or state-inflicted violence.¹¹ For the law to be legitimate, rules cannot be followed solely based on coercion—trust must come from a place of genuine respect for the law. Additionally, compliance relies on a general agreement that rules are inherently fair. Culturally, the U.S. shares the collective expectation that laws should be grounded in factual evidence rather than personal hunches. When people—in this case American citizens—believe the law is biased, it becomes "unworthy of respect."¹²

III. How Does the Supreme Court Maintain Legitimacy?

Like the Rule of Law, the Supreme Court requires the same "mystification" in order for it to function effectively. In recent years, the legitimacy of the Supreme Court has become a controversial topic across political and legal spaces. This section will address the two factors that play a role in defining the authority of the Supreme Court.

The first places an emphasis on public perceptions of the Court. Scholars have referred to the importance of "prevailing public attitudes" in reference to the courts "sociological legitimacy."¹³ Notably, polling and surveys have become the most common method for collecting data on the Supreme Court's overall reputation. They measure factors that either empower or disempower the Supreme Court: approval of rulings, personality of Justices, the Court's transparency with the public, the existence of perceived bias towards or against certain groups, and the way the court functions and comes to their decisions.¹⁴ Thus, when rulings are controversial, unpopular, or perceived as illogical, the legitimacy of the Supreme Court is questioned.

However, Justice Roberts presents a compelling counterargument. In a meeting in Colorado Springs, he noted that the Supreme Court has "always decided controversial cases and decisions have always been subject to intense criticism."¹⁵ He explains that the public's disapproval of decisions should not be the sole "guide" for genuine concerns of legitimacy. Roberts delivered these comments after the Supreme Court came under scrutiny following the

¹⁰ Lawrence B. Solum, *Procedural Justice*, 78 S. CAL L. REV. 181, 183-85 (2004).

¹¹ Gillian E. Metzger, *Considering Legitimacy*, 18 GEO. J. L. & PUB. POL'Y 353, 357 (2020).

¹² *Id.*, at 359

¹³ METZGER *supra* note 8, at 357

¹⁴ Or Bassock, *The Supreme Court's New Source of Legitimacy*, 16 U. Pa. J. Const. L. 153, 156-57 (2013).

¹⁵ Robert Barnes, *Roberts says Supreme Court will reopen to public and defends legitimacy*, THE WASHINGTON POST (Sept 10, 2022), <https://www.washingtonpost.com/politics/2022/09/10/supreme-court-roberts-legitimacy/>

overturning of legal protections for the right to abortion.¹⁶ His statements bring about an important question: is public perception enough to truly define legitimacy? After all, the Supreme Court consists of qualified Justices that are selected based on their expertise and wisdom of the law. Therefore, legitimacy must also examine whether the Courts are producing credible and consistent decisions, display “procedural fairness”, and “obey the Constitution or laws of the United States.”¹⁷

Data suggests that the Supreme Court has been weakened in both categories: the public’s approval of the Supreme Court has hit an all-time low, and many scholars have challenged the validity of both the Justices and their decisions. In the following sections, both breaches of legitimacy will be discussed.

IV. An Era of Broken Trust

According to the Pew Research Center, as of 2025, the approval ratings of the Supreme Court have plummeted and remain at a historic low. 51% of Americans claim they either have little or no trust in the Supreme Court.¹⁸ Although public mistrust has fluctuated throughout history, scholars note that the rapid decline of approval is breaking national records. What has caused the Supreme Court’s sudden downfall?

For one, a shift towards a more conservative ideology following President Trump’s first term has become a source of controversy. A decade-long longitudinal survey has shown that the Supreme Court is now more conservative than the public.¹⁹ In 2021, the Supreme Court maintained a conservative majority of 6-3, surpassing the five votes required to create a majority ruling. A conservative dominance in the Court shaped rulings related to gun-rights and abortion that had aggressively right-leaning outcomes.²⁰ As previously mentioned, the *Dobbs* decision has played a key role in the decline of the Supreme Court’s national reputation. As of 2025, 43% of Americans agree that the Supreme Court is “too Conservative.”²¹

For decades, the Supreme Court has generally been respected by both Republicans and Democrats.²² Unlike the Presidential administration or Congress, the Supreme Court relies on uniform procedures and rules rather than the pressure of constituents. This isn’t to say that the

¹⁶ *Dobbs v. Jackson*, 597 U.S. 215 (2022)

¹⁷ METZGER *supra* note 8, at 357-58

¹⁸ Jeffery Jones, *New High Say Supreme Court Is Too Conservative*, GALLUP NEWS (Oct. 1, 2025), <https://news.gallup.com/poll/695759/new-high-say-supreme-court-too-conservative.aspx>

¹⁹ Douglas Keith, *A Legitimacy Crisis of the Supreme Court’s Own Making*, BRENNAN CENTER FOR JUSTICE (Sept. 15, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/legitimacy-crisis-supreme-courts-own-making>

²⁰ Marcia Coyle, *The double-edge sword of the Supreme Court’s conservative majority*, NATIONAL CONSTITUTIONAL CENTER (Oct. 5, 2021), <https://constitutioncenter.org/blog/the-double-edge-sword-of-the-supreme-courts-conservative-majority>

²¹ JONES, *supra* note 14

²² *Trust in U.S. Supreme Court Continues to Sink*, ANNENBERG PUBLIC POLICY CENTER UPENN (Oct. 2, 2024), <https://www.annenbergpublicpolicycenter.org/trust-in-us-supreme-court-continues-to-sink/>

courts are never involved in controversies associated with political beliefs. Many Supreme Court decisions are inherently political. Their rulings on matters such as abortion, gay marriage, gun laws, affirmative action, and immigration have strong associations with political ideologies.²³ However, the Supreme Court's ability to remain highly trusted by the public, regardless of ideology, is what separates it from other branches of government.

This introduces the second explanation of the Supreme Court's decreasing popularity: increased polarization. Americans expect Justices to be flexible and willing to find compromise in the face of disagreements. "Swing" Justices, such as Anthony Kennedy, frequently flip-flop between right and left leaning rulings throughout their career are especially important in maintaining unanimity in the Court.²⁴ Recent Supreme Court decisions, however, have faced backlash for targeting marginalized communities and creating further divisions in the public.

This year, the court lifted a district order in *Department of Homeland Security v. D.V.D* that "prevented immigrants from being deported to countries not listed on their removal order".²⁵ The Supreme Court allowed deportations to continue while the case was still being heard by district courts. The order received backlash for allowing immigrants to be sent to countries "where they have no connection", making those vulnerable individuals subject to deportation without full due process of the law. Judges in the district court were concerned that immigrants "could be subjected to torture or death upon arrival."²⁶ The order was issued with little explanation regarding the constitutional protections of due process and from cruel punishments. This is an example of how the Supreme Court's recent decisions have seemingly targeted non-white groups, creating deeper political division among the public.

Data suggests that such sharp partisan divides in public opinion are unlike the typical nature of the Supreme Court. A study conducted by the Annenberg Public Policy Center of the University of Pennsylvania (APPC) found that the gap between Republicans and Democrats regarding trust has significantly widened (See Figure 1).²⁷

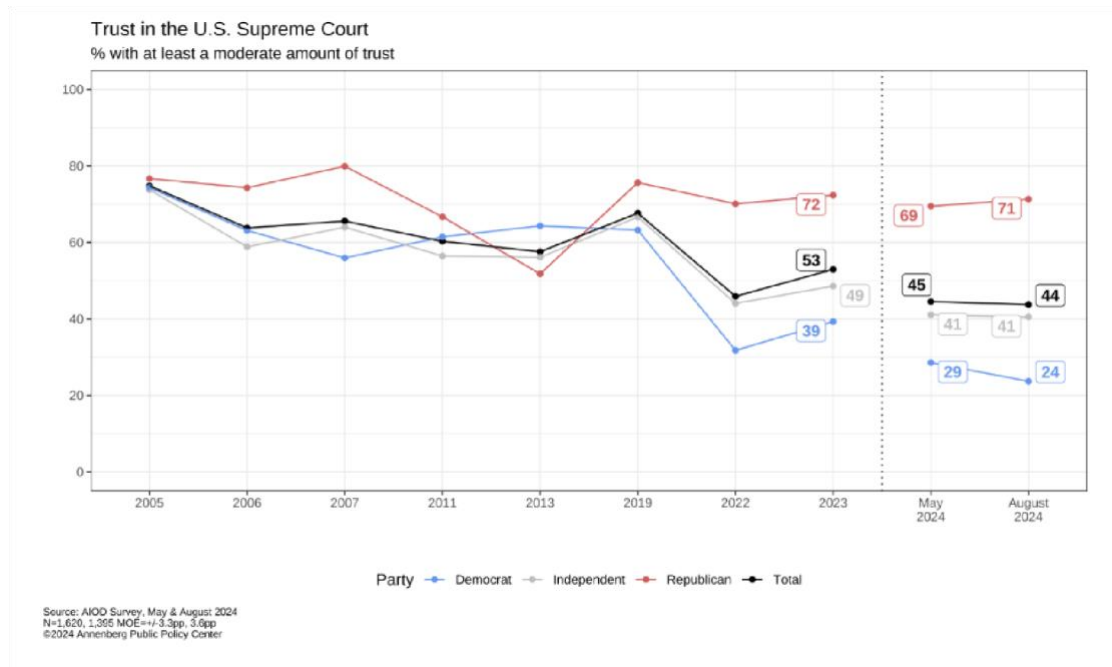
²³ *Id.*

²⁴ COYLE, *supra* note 16.

²⁵ Erwin Chemerinsky, *Why the shadow docket should concern us all*, SCOTUSBLOG (Aug. 4, 2025), <https://www.scotusblog.com/2025/08/why-the-shadow-docket-should-concern-us-all/>
Department of Homeland Security v. D.V.D. 606 U. S. (2025)

²⁶ *Id.*

²⁷ "Trust in" *supra* note 18.



As shown by the graph above, 72% of Republicans had at least a moderate amount of trust in the Supreme Court while only 39% of Democrats trusted the Court in 2023. This gap has continued to widen in the past few years, displaying a 47-point difference as of August 2024.

It is important to note that the political nature of the Supreme Court is not a new phenomenon. The Supreme Court has always held either a Republican or Democratic majority, meaning most justices will tilt in a particular direction depending on their affiliation. However, such a wide gap in public trust suggests that the Courts have become both too polarized and too politicized.

V. Analyzing the Court's Credibility

Outside of public opinion, the transparency and consistency of the Court have also gone under scrutiny due to the rise of the shadow docket. These emergency decisions are abrupt, unsigned, and quickly made in comparison to a formal Supreme Court decision.²⁸ Historically, the right to emergency decisions exists because of urgent circumstances in which the Court may lack the time to formally rule on cases. Thus, shadow dockets do not require the Supreme Court to file case briefings, hear oral arguments, or publish a fully written out majority opinion.²⁹ According to data, between Trump's inauguration and the summer recess on June 30, the Court issued "more than twice as many requests for emergency relief than the George W. Bush and

²⁸ Adam Liptak, Supreme Court Lifts Restrictions on L.A. Immigration Stops, THE N.Y. TIMES, Sept. 8, 2025, at A1

²⁹ KEITH, *supra* note 18

Obama administrations filed in 16 years.”³⁰ Other sources note that the Trump administration has passed 84% of emergency decisions throughout U.S. history.³¹

This increase in shadow dockets presents many issues with credibility. For one, it allows the Supreme Court to quickly push out orders without careful consideration, which has resulted in a neglect of Constitutional rights and the overturning of “long-standing precedents.”³² Second, it erodes the Court’s transparency with the public because published opinions provide little explanation on how they are made. This makes it unclear whether rulings are grounded in careful consideration of the law, or in bias and the purpose of serving a political agenda. Many rulings have been heavily criticized for being constitutionally murky.

This year, the Supreme Court issued a brief and unsigned order that lifted restrictions on the immigration initiatives in LA under the Trump administration. The issue—which dismissed previous restrictions on ICE officers enforced under *Vasquez Perdomo v. Noem*—allows citizens to be questioned based on factors such as race, type of work, and language spoken. The ruling came under scrutiny by several organizations and public figures for its racially discriminatory nature. The American Immigration Council referred to the decision as “the way for racial profiling” to be allowed by ICE agents. Similar fears were shared by California’s Governor, as Newsom argued that the brief order would create “a parade of racial terror in Los Angeles.”³³ Additionally, the emergency order has been questioned for its violation of the Reasonableness Clause of the Fourth Amendment, which protects citizens from unreasonable search and seizures. Concerns were shared by Justice Sotomayor, who addressed the constitutionality of the decision in her dissent: “Rather than stand idly by while our constitutional freedoms are lost, I dissent.”³⁴ Upholding the Constitution is a core principle in measuring the Supreme Court’s credibility: the use of shadow dockets is a dangerous tool that the Supreme Court is now using to erode constitutional protections, something that many Americans fear.

In other recent cases, justices have similarly been criticized for making decisions based on personal preferences rather than emphasizing logical reasoning and the rule of law. As previous Justice Ruth Bader Ginsburg explained, the courts must avoid becoming “a political branch of government” in their application.³⁵ Many cases, however, illustrate the Courts directly supporting the agenda of the federal government.

In 2024, the case *Trump v. United States* granted presidential immunity from criminal

³⁰ Mark Wolf, ‘Shadow Docket’ Looms Large at the Supreme Court This Term, NATIONAL CONFERENCE OF STATE LEGISLATORS (Aug. 11, 2025), <https://www.ncsl.org/state-legislatures-news/details/shadow-docket-looms-large-at-the-supreme-court-this-term>

³¹ LIPTAK, *supra* note 26

³² CHEMERINSKY, *supra* note 25

³³ Gavin Newsom, Governor Newsom issues statement on the Supreme Court’s ruling to uphold racially motivated immigration arrests in Southern California, CALIFORNIA STATE PORTAL (Sept. 8, 2025), <https://www.gov.ca.gov/2025/09/08/governor-newsom-issues-statement-on-the-supreme-courts-ruling-to-uphold-racially-motivated-immigration-arrests-in-southern-california/>

³⁴ *Noem v. Vasquez Perdomo*, 606 U.S. 1, 12 (2025).

³⁵ COYLE, *supra* note 16.

prosecution for acts within the President’s authority during his time in office.³⁶ The 6-3 conservative majority allowed the decision to pass, despite the D.C. District Court and the D.C. Circuit ruling against these efforts. The decision was a direct response to the criminal investigation of Trump’s contentious role in inciting the January 6 attacks on the U.S. Capitol. After the decision was issued by the Supreme Court, the President’s indictment was dismissed, and the investigation was halted.³⁷

This outcome received abundant backlash for its protection of the President. It was seen as preventing “legal accountability” from being taken under the Court’s supervision and undermining the democratic principles of checks and balances.³⁸ *Trump v. United States* offers valid skepticism towards the neutrality of many of the Supreme Court Justices. Professor Aziz Huq from the University of Chicago Law School expressed that the Supreme Court’s reasoning was grounded in “consequentialism” and a political bias rather than “careful reasoning from text, precedent, or history.”³⁹ These concerns extend beyond the public’s political beliefs. When Judges “stray into places that look like politics” rather than remaining impartial, the credibility and formality of the Supreme Court can be called into serious question.⁴⁰

VI. Conclusion

Do these factors truly make the Supreme Court “illegitimate”? Objectively, this question does not have an established answer. Although legitimacy can be measured by analyzing Justices and their rulings, how these factors are interpreted will vary from person to person. Although the legitimacy crisis of the Supreme Court has been a prominent topic in public spaces, many have defended the Court, claiming that concerns have simply been over-emphasized by the public.

For one, the Court has a long history of being politicized in the United States: the appointment of Justices is often strategically used to advance presidential motives or push back on initiatives from Congress.⁴¹ The use of “court-packing” has been used for decades as a method to shift the ideological makeup of the Supreme Court or even alter rulings for specific cases.⁴² While the Supreme Court is meant to be impartial in theory, it has frequently acted as a political actor in practice. Thus, when polarization, strategic appointments under Trump’s presidency, and the use of shadow dockets are brought into the discussion, it can be argued that these occurrences have always existed in the history of the Court.

The criteria for defining and creating the Court’s legitimacy is also not set in stone. In fact, legal scholars theorize that the sources of the law’s legitimacy have already undergone significant changes. As a professor in Constitutional law, Or Bassock, notes, the Supreme Court

³⁶ *Trump v. United States*, 603 U.S. 5, 5 (2024).

³⁷ *Id.* at 19

³⁸ Gillian E. Metzger, *Disqualification, Immunity, and the Presidency*, 138 Harv. L. Rev. 112, 113-14 (2025).

³⁹ *Id.* at 113

⁴⁰ KEITH, *supra* note 15

⁴¹ Brian L. Frye, *Court Packing Is a Chimera*, 42 Cardozo L. Rev. 2697, 2702-03 (2021).

⁴² *Id.* at 2703

has already gained a “newfound legitimacy”: the rise of mass media and digital technology has made public opinion a major factor in defining legitimacy of the Courts.⁴³ As organizations such as Gallup and the Pew Research Center release data highlighting the opinions of everyday Americans, legal and political scholars have placed more emphasis on public opinion when considering institutional legitimacy.⁴⁴

These claims effectively challenge the vast fear over a legitimacy crisis. They weaken the argument that the Supreme Court is truly becoming corrupt or less transparent than before.

However, analyzing legitimacy still plays a key role: holding the legal system accountable. Criticisms of the Court’s legitimacy have given citizens a platform to address abuses of power, breaches of individual rights, and the exacerbation of oppression in the legal system. Recent Court decisions, legitimate or not, have still had harmful consequences on marginalized communities such as women, immigrants, and people of color in the U.S.

If we do not question legitimacy, who is responsible for holding the Supreme Court accountable? How can the Courts be utilized as a progressive and morally grounded body of government, rather than an exploitative one? Discussing legitimacy and public trust allows these concerns to be addressed.

⁴³ BASSOCK, *supra* note 11, at 158-60

⁴⁴ *Id.* at 158-59